D.B. HABEAS CORPUS WRIT NO. 1978/2007

(Dilip Gehlot v. State of Raj. & Ors.)

Date of order : 04.10.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. SANGEET LODHA, J.

Mr. Dilip Gehlot, for the petitioner.
Mr. Trilok Joshi, for the respondent.
Mr. L.R. Upadhyay, Dy. G.A.

This Habeas Corpus petition has been filed for securing the custody of the son of petitioner who has so far been nurtured by his maternal grand parents for last more than six years. The maternal grand father of the boy had earlier moved an application before the Madras High Court for his appointment as guardian for the boy.

In view of the above the earlier D.B. Habeas Corpus Petition No. 3251/2001 had been disposed of by this court with certain directions subject to the decision of the guardianship application pending before the Madras High Court.

This petition has again been filed on behalf of the father of the boy, as during this period the maternal grand father of the

boy had died and the petition before Madras High Court had been dismissed as having become infructuous.

Meanwhile, the grand mother of the boy had preferred a custody application before Family Court, Jodhpur where the petitioner is also a party.

We are informed that an application for interim relief by the grand mother has since been refused and the court had declined to consider the custody of child to petitioner by observing that the petitioner had not moved an application for custody for himself and also because of the pendency of this petition.

We are of opinion that it is not a fit case for issue a writ of Habeas Corpus, as child cannot be said to be under alleged detention which he continue to be with his grand mother only because petitioner as father claims right to custody of child. Normally it is a case for seeking custody of child. It is open for the petitioner to make a request for the custody of the child in the pending matter before the Family Court and on such request being made, it is for the Family Court to decide about the custody of child keeping best

interest of the child in mind on the basis of set principles.

An observations made in this petition or the earlier petition are without prejudice to the petitioner's right to claim custody of the child, which will always subject to consideration of ultimate welfare of the child.

Subject to above this Habeas Corpus writ petition is disposed off.

(SANGEET LODHA)J. **(RAJESH BALIA)J.**

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